

No. 13049

United States
Court of Appeals
For the Ninth Circuit.

GLENN O. PRICKETT, et al.,

Appellants,

vs.

CONSOLIDATED STEEL CORPORATION, a
Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division.

FILED

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Complaint for Wages and Liquidated Damages Due Under the Fair Labor Standards Act of 1938.....	20
Exhibit 1—Consent to Become Party Plaintiff, Charles R. Cobb.....	24
2—Consent to Become Party Plaintiff, Frank Hemminger.....	24
3—Consent to Become Party Plaintiff, Fred M. Koehler.....	25
4—Consent to Become Party Plaintiff, Oliver H. Raftery.....	25
5—Consent to Become Party Plaintiff, Charles E. Smith-Sanford..	25
6—Consent to Become Party Plaintiff, Harry Sortors.....	26
7—Consent to Become Party Plaintiff, Luther M. Walters.....	26
Answer to Complaint.....	14
Bill of Particulars.....	11
Certificate of Clerk.....	42, 50
Complaint for Wages and Liquidated Damages Due Under the Fair Labor Standards Act of 1938	2

INDEX	PAGE
Designation of Record on Appeal.....	40
Designation of Record to Be Printed on Appeal	45
Final Judgment of Dismissal.....	47
Minute Order March 7, 1949.....	19
Minute Order May 12, 1947.....	10
Minute Order May 23, 1949.....	35
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	36, 40, 48
Notice of Motions: To Dismiss Action to Strike Matter for More Definite Statement and Bill of Particulars.....	5
Notice of Motions: To Dismiss Amended Complaint, to Dismiss Claims of Certain Claimants, to Strike Certain Matter, for a More Definite Statement.....	30
Order of Dismissal as to Certain Plaintiffs...	38
Pre-Trial Stipulation of Facts and Statement of Issues.....	27
Statement of Points on Appeal.....	44
Stipulation to Extend Time to File Record and Docket Appeal and Order Granting Time...	37
Stipulation and Order Re Record on Appeal, Statement of Points on Appeal and Briefs...	52
Stipulation Re Clerk's Record on Appeal and Waiver	42, 49

NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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PERRY BERTRAM,

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Los Angeles 14, Calif.

For Appellee:

ALFRED WRIGHT,
HAROLD F. COLLINS,

621 S. Spring St.,
Los Angeles 14, Calif. [1*]

* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil No. 6274-PH

GLENN O. PRICKETT, H. F. WINANS and S.
E. WHITNEY, on behalf of themselves and
other employees similarly situated,
Plaintiffs,

vs.

CONSOLIDATED STEEL CORPORATION,
LTD., a corporation,
Defendant.

COMPLAINT FOR WAGES AND LIQUI-
DATED DAMAGES DUE UNDER THE
FAIR LABOR STANDARDS ACT OF 1938

By way of complaint, plaintiffs complain and
allege, as follows:

I.

Plaintiffs bring this action on behalf of them-
selves and all other employees similarly situated,
pursuant to Sec. 16 (b) of the Fair Labor Stand-
ards Act of 1938 (Public No. 718, 75th Cong., CH.
676, 52 Stat. 1060-1069 (1938), 29 U.S.C. Sec. 201-
219), hereinafter referred to as the Act to recover
overtime wages, liquidated damages and attorneys'
fees.

II.

Jurisdiction of this action is conferred upon the
Court by [2] Sec. 16 (b) of the Act and by Sec. 24
(8) of the Judicial Code (28 U.S.C. Sec. 41 (8)).

III.

Defendant is a corporation organized under the laws of the State of California, authorized to do business therein and having its principal place of business in the County of Los Angeles, state of California, within the jurisdiction of this Court.

IV.

At all times herein mentioned, defendant was engaged at its said place of business in the County of Los Angeles, State of California, within the jurisdiction of this Court, in interstate commerce and in the production of goods, to-wit, ships, for interstate commerce within the meaning of the Act.

V.

Within three years last past, defendant employed the plaintiffs and the other employees similarly situated, on behalf of whom this action is brought, at its said place of business, as maintenance electricians, marine electricians, stationary engineers, operating engineers, mechanical maintenance employees, toolroom attendants, toolroom mechanics, warehousemen, issue and receiving clerks, and in various other crafts and capacities.

VI.

During the respective periods of employment by the defendant, as aforesaid, plaintiffs and said other employees similarly situated, were compensated at various hourly rates, the precise period of employment and hourly rates at which plaintiffs and each such employees were employed are contained in the

books and records of the defendant, and are not known to the plaintiffs at the present time. In substantially all of the weeks in which plaintiffs and other employees similarly situated were employed, they were credited with having worked forty-eight (48) hours or more, for forty (40) hours of which they were paid at straight time, and for [3] all hours in excess of forty (40) hours, they were paid at the rate of time and one-half. In addition to said forty-eight (48) hours or more for which they were credited and paid, the plaintiffs and said other employees similarly situated worked one-half ($\frac{1}{2}$) hour each day, or three (3) hours or more each week, for which they were not credited and for which they received no compensation whatsoever.

VII.

There is now due, owing and unpaid, from the defendant to the plaintiffs, and to each of the employees similarly situated, on behalf of whom this action is brought, a sum equal to one and one-half times the regular rate at which each such employee was employed, and for which he was compensated, times three (3) or more hours for each week of his employment by the defendant, and for which he was not paid, plus an equal amount as liquidated damages.

VIII.

Section 16 (b) of the Act provides that the Court in this action shall, in addition to any judgment

awarded to plaintiffs, allow a reasonable attorneys' fee to be paid, by the defendant.

Wherefore, plaintiffs pray judgment against the defendant and in favor of the plaintiffs and each of the employees similarly situated, on behalf of whom this action is brought, in a sum equal to one and one-half times the regular rate at which each such employee was employed, times three (3) or more hours for which he was not paid in each week of his employment by the defendant, plus an equal amount as liquidated damages, plus attorneys' fees for services rendered herein, and for costs of suit and all proper relief.

MOHR AND BORSTEIN,

By /s/ ALFRED J. BORSTEIN,
Attorneys for Plaintiffs.

[Stamped]: Complaint amended: 1st date: April 6, 1949.

[Endorsed]: Filed Jan. 16, 1947. [4]

[Title of District Court and Cause.]

NOTICE OF MOTIONS: TO DISMISS ACTION
TO STRIKE MATTER FOR MORE DEFINITE
STATEMENT AND BILL OF PARTICULARS

To the Plaintiffs Herein and to Their Attorneys,
Mohr and Borstein:

Please Take Notice that on Monday, May 12, 1947,

at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard in Court Room No. 3, of United States District Judge Peirson M. Hall, located in the United States Post Office and Court House at Los Angeles, California, the defendant, Consolidated Steel Corporation, by and through its attorneys, will present motions for orders and relief as follows:

I.

To dismiss the pending action in its entirety.

Said motion will be urged upon the ground that the Complaint herein fails to state any claim upon which relief can be granted against the defendant.

II.

To dismiss the pending action as to all unnamed and [5] unidentified claimants in whose behalf plaintiffs assert the right to bring and maintain said action, which claimants are indeminately referred to in the Complaint herein (Paragraphs I, V, VI and VII) as "other employees similarly situated," unless each of said claimants shall intervene or otherwise become a party of record in said action, or shall designate an agent or representative to maintain said action in his behalf within a reasonable period of time to be fixed by the court herein.

Said motion will be urged upon the ground that unnamed and unidentified claimants have no status as parties to said action, and upon the further ground that plaintiffs have no right to bring or

maintain said action in behalf of unnamed and unidentified claimants.

III.

To strike matters stated and alleged in the Complaint as follows:

1. The words "and all other employees similarly situated," in Paragraph I, page 1, lines 25 and 26.

2. The words "and all other employees similarly situated," in Paragraph V, page 2 line 16.

3. The words "and all other employees similarly situated," in Paragraph VI, page 2, lines 24, 25 and 30; page 3, lines 3 and 4.

4. The words "and each such employees," in Paragraph VI, page 2, lines 26 and 27.

5. The words "and to each of the employees similarly situated," in Paragraph VII, page 3, line 10.

6. The words "and each of the employees similarly [6] situated," in the Prayer, page 3, lines 22 and 23.

IV.

To require plaintiffs to furnish more definite statements and a bill of particulars respecting matters, severally, as follows:

1. As to each plaintiff and claimant, a statement describing the exact nature of the work, labor or other services performed.

2. A detailed statement relative to the "one-half ($\frac{1}{2}$) hour each day, or three (3) hours or more each week" worked by the several claimants "for which

they were not credited and for which they received no compensation whatsoever” as alleged in Paragraph VI of the Complaint, which statement shall specify:

(a) The exact nature of work performed by each claimant during said one-half ($\frac{1}{2}$) hour period each day.

(b) Whether the alleged work was performed prior to the commencement of or subsequent to the termination of the regularly established shift or hours of employment of each claimant or preceding, during or subsequent to any lunch, rest or recreational period or otherwise.

(c) Whether the one-half ($\frac{1}{2}$) hour period each day for which compensation is claimed, includes any effort expended or interval of time devoted to travel to or from or within defendant's plant or place of business; and if so, the [7] number of minutes expended in each such act of travel.

(d) Whether the defendant ordered, instructed, notified or in any other manner required or directed claimants or any of them to expend, devote or apply said one-half ($\frac{1}{2}$) hour each day to specified duties, services, occupations, assignments or efforts; and if so, the time, place, and manner of performance thereof, and if so, the name and official position of the employee, representative or officer of defendant who initiated or enforced such requirement.

3. A detailed statement as to all claimants referred to in the Complaint (Paragraph I, page 1) as

“all other employees similarly situated,” showing with respect to each such claimant:

- (a) claimant's name;
- (b) job classification;
- (c) nature of duties performed;
- (d) period of employment by defendant; and
- (e) the date, form, and nature of every authorization under which any of the plaintiffs assert the right to represent each such claimant in the pending action.

Said motion will be urged upon the ground that defendant requires the designated [8] information in order to prepare its defense herein.

The foregoing motions will be based upon the pleadings and records herein, and defendant will rely upon the Memorandum of Points and Authorities filed herewith.

Dated: April 11, 1947.

ALFRED WRIGHT and

HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,

Attorneys for Defendant

Consolidated Steel Corporation.

[Endorsed]: Filed April 11, 1947. [9]

At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of May in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable: Peirson M. Hall,
District Judge.

[Title of Cause.]

No. 6274-PH Civil
GLEN O. PRICKETT, et al.,

Plaintiffs,

vs.

CONSOLIDATED STEEP CORP., LTD.,

Defendant.

This cause coming on for hearing on motion of the defendants to dismiss, to strike, for more definite statement, or for a Bill of Particulars, pursuant to notice thereof filed April 11, 1947; Messrs Mohr and Borstein by Alfred J. Borstein, Esq., appearing as counsel for the plaintiffs; Harold Collins, Esq., appearing as counsel for the defendant; counsel for plaintiff states he is willing to grant a Bill of Particulars, whereup motion for Bill of Particulars is granted and all other motions are stricken from the calendar. [16]

[Title of District Court and Cause.]

BILL OF PARTICULARS

To the Defendant, Consolidated Steel Corporation,
Ltd., and to Their Attorney:

The following is the Bill of Particulars demanded
by you:

The names of the plaintiffs and the other claim-
ants similarly situated to them, together with job
classification of each of them, and their approximate
dates of employment at the Consolidated Steel Cor-
poration, Ltd., are:

Name	Job Classification	Approx. Dates of Employment
Glen O. Prickett: Maintenance Electrician (Sub Station Operator)		May 5, 1943, to November 29, 1946
H. F. Winans: Maintenance Electrician (Sub Station Operator)		March 23, 1942, to May 3, 1946
S. E. Whitney: Maintenance Electrician (Sub Station Operator)		January 19, 1945, to June 30, 1946
Harry O. Sortors: Maintenance Electrician (Lead- man of Sub-Stations) Operating Engineer, Sta- tionary Engineer		June 30, 1941, to January 14, 1946
Luther M. Walters: Stationary Engineer (Butane, Oxygen and Acetylene Plants)		November 22, 1943, to August, 1946
Samuel D. Tinker: Stationary Engineer (Acety- lene, Oxygen, Propane Plants) and Compressor House Operator		December 6, 1942, to November, 1945
Frank Hemminger: Maintenance Electrician (Sub- Station Operator)		June 1, 1941, to June 25, 1946
Oliver H. Raftery: Maintenance Electrician (Sub- Station Operator)		June 16, 1942, to April, 1946
Fred M. Koehler: Maintenance Electrician (Sub- Station Operator)		March 6, 1942, to March 4, 1946
Charles R. Cobb: Maintenance Electrician (Sub-Station Operator) (Leadman Sub- Stations)		January 15, 1942, to July 25, 1946
Charles E. Smith-Sanford: Maintenance Electrician (Sub-Station Operator)		July, 1941, to August, 1945

The one-half ($\frac{1}{2}$) hour each day that each and every person above named worked, as alleged in the complaint, occurred during his respective lunch periods, during which time he could not leave his post or station, but was required to perform work and services during said period of time the same as during the other periods of his shift. [18]

The nature of the work performed and the duties of each claimant are as follows:

*Name**Duties*

Glen C. Prickett—Operated Sub-Station at all times during his shift, including the lunch period. Worked $8\frac{1}{2}$ hours per day, and was paid for 8 hours.

H. F. Winans—Operated Sub-Station at all times during his shift, including the lunch period. Worked $8\frac{1}{2}$ hours per day, and was paid for 8 hours.

S. E. Whitney—Operated a Sub-Station at all times during his shift, including the lunch period. Worked $8\frac{1}{2}$ hours per day, and was paid for 8 hours.

Harry O. Sortors—Leadman in charge of Sub-Stations, handled electrical switching, stood by at Sub-Stations and for a one-year period was a motion picture projectionist. All of said work having been performed during his lunch period. He worked $8\frac{1}{2}$ hours per day and was paid for 8 hours.

Luther M. Walters—Operated the Butane, Oxygen and Acetylene Plants during his shift, includ-

ing the lunch period. Worked $8\frac{1}{2}$ hours per day, and was paid for 8 hours.

Samuel D. Tinker—Operated Acetylene Plant, Oxygen Plant and Propane Plant, and Compressor House. Operated all the equipment at said plants, maintaining said equipment, and standing by at all times during his shift, including the lunch period. Worked $8\frac{1}{2}$ hours per day, was paid for 8 hours.

Frank Hemminger—Operated Sub-Station at all times during his shift including the lunch period. Worked $8\frac{1}{2}$ hours per day and was paid for 8 hours. [19]

Oliver H. Raftery—Operated Sub-Stations, crane maintenance, maintenance electrician on the ways, and performed this work during his shift, including the lunch period; worked $8\frac{1}{2}$ hours per day and was paid for 8 hours.

Fred M. Koehler—Operated Sub-Station at all times during his shift including the lunch period. Worked $8\frac{1}{2}$ hours per day and was paid for 8 hours.

Charles R. Cobb—Operated a Sub-Station and was also a lead-man in charge of Sub-Station Operators. Worked at all times during his shift, including his lunch period. Worked $8\frac{1}{2}$ hours per day; was paid for 8 hours.

Charles E. Smith-Sanford—Operated a Sub-Station at all times during his shift, including the lunch period. Worked $8\frac{1}{2}$ hours per day, and was paid for 8 hours.

The orders under which the claimants were required to stay at their posts during their lunchtime period, were issued by Vern D. Elliott, General Electrical Superintendent of the yard, and relayed to all supervisory personnel under him; the requirements that the above named persons remain at their post during their lunch period was necessarily required due to the nature of their duties and the character and type of the equipment which they were required to maintain.

Dated: May 29, 1947.

MOHR AND BORSTEIN,
By /s/ ALFRED J. BORSTEIN,
Attorneys for Plaintiffs.

Affidavit of service by mail attached.

[Endorsed]: Filed June 5, 1947. [20]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Consolidated Steel Corporation, hereinafter referred to as the defendant, for its answer to the Complaint on file herein admits, denies and alleges as follows:

I.

Referring to paragraphs I, II and VIII of the Complaint, defendant neither admits nor denies the allegations made therein as to the jurisdiction of the court, for the reason that said allegations constitute statements and conclusions of law and do not constitute statements of facts.

II.

Referring to Paragraph III of the Complaint, defendant admits the allegations made therein. In connection therewith, defendant alleges that its corporate name formerly was Consolidated Steel Corporation, Ltd., but that said name has been changed to [22] and now is Consolidated Steel Corporation.

III.

Referring to Paragraph IV of the Complaint, defendant denies every allegation made therein, except as hereinafter admitted or otherwise alleged. Defendant admits that between July 1, 1942, and August 31, 1946, approximately, defendant engaged in the construction, fabrication and repair of ships and vessels within Los Angeles County, California, pursuant to contracts and commitments with the government of the United States of America and its departments and agencies, including United States Maritime Commission and United States Navy. Defendant denies that said activities constituted engagement in interstate commerce or in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938.

IV.

Referring to Paragraph V of the Complaint, defendant admits that for varying periods of time within three years prior to the commencement of the pending action defendant employed the several plaintiffs named in the Complaint and the several additional claimants named in the Bill of Par-

ticulars heretofore filed in the pending action. Defendant denies that said plaintiffs and claimants were continuously so employed during or throughout said three-year period, or that they were employed in the respective job classifications, or that they performed the respective duties stated in Paragraph V of the Complaint or in said Bill of Particulars.

V.

Referring to Paragraph VI of the Complaint, defendant denies every allegation made therein, except as hereinafter admitted or otherwise alleged. Defendant alleges that each and all of the plaintiffs and claimants named in said Bill of Particulars have been fully credited, allowed and compensated for all hours [23] that they worked for defendant during said period, and that they have been compensated and paid at hourly rates of compensation in excess of the minimum rates prescribed in said Act, and they have been compensated and paid at least one and one-half times their respective hourly rates of compensation for all hours in excess of forty hours a week which they may have worked in any work week during said period.

VI.

Referring to Paragraph VII of the Complaint, defendant denies every allegation made therein. Defendant alleges that the failure on its part to pay any claimant herein the amount of compensation to which any such claimant may have been entitled to receive, (if the court finds that there was such a

failure) was not the result of deliberate, wilful or neglectful action on the part of defendant, but was the result of actions and procedures pursued in good faith by defendant.

For a First Affirmative Defense to the Complaint herein, defendant alleges as follows:

I.

Defendant alleges that the services and activities, if any, performed by the plaintiffs and claimants as generally described in the Complaint and further particularized in said Bill of Particulars were not rendered or performed pursuant to any written or unwritten contract or any custom or practice in effect at the time of the performance of said alleged services and activities, between defendant and said plaintiffs and claimants or their agents or collective bargaining representatives.

For a Second Affirmative Defense to the Complaint herein, defendant alleges as follows: [24]

I.

The claims of all the plaintiffs and claimants named in said Bill of Particulars, other than those named in the Complaint on file herein, to wit Glenn O. Prickett, H. F. Winans and S. E. Whitney, for alleged unpaid compensation earned prior to June 5, 1945, are barred by Sections 6, 7 and 8 of the Portal-to-Portal Act of 1947 (Public Law 49, 80th Congress, 1st Session).

For a Third Affirmative Defense to the Complaint herein, defendant alleges as follows:

I.

Defendant alleges that the failure, if any, on the part of defendant to compensate the several plaintiffs and claimants herein for services and activities performed by them during their respective lunch periods, as described in said Complaint and Bill of Particulars, was not the result of any wilful or deliberate failure or refusal on the part of defendant to compensate said claimants for their services, but said failure, if any, was the result of actions and procedures pursued in good faith by defendant, and that for said reason the court should not award said claimants liquidated damages herein.

For a Fourth Affirmative Defense to the Complaint herein, defendant alleges as follows:

I.

The court does not have jurisdiction of the subject matter of the pending action.

Wherefore, defendant prays that the Complaint herein be dismissed, that defendant have judgment for its costs and for such other relief as to the court seems proper.

ALFRED WRIGHT and
HAROLD F. COLLINS,
By /s/ HAROLD F. COLLINS,
Attorneys for Defendant. [25]

State of California,
County of Los Angeles—ss.

John M. Robinson, Jr., being first duly sworn,
deposes and says:

That he is Secretary of Consolidated Steel Cor-

poration, a corporation, Defendant in the above entitled action, and as such officer he is duly authorized to and does make this verification for and on behalf of said corporation; that he has read the foregoing Answer of Defendants and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to such matters, that he believes them to be true.

/s/ JOHN M. ROBINSON, JR.

Subscribed and sworn to before me this 11th day of June, 1947.

[Seal] /s/ EDNA R. WINTER,
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed June 16, 1947.

At a stated term, to wit: The February Term, A. D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 7th day of March in the year of our Lord one thousand nine hundred and forty-nine.
Present: The Honorable: Peirson M. Hall,
District Judge.

[Title of Cause.]

For pre-trial hearing; Perry Bertram, Esq., appearing as counsel for plaintiffs; Harold Collins, Esq., appearing as counsel for defendant;

Attorney Collins states he consents to the filing of an amended complaint reserving all rights and defenses under pleadings.

On motion of Attorney Bertram, it is ordered that plaintiff is granted 30 days to amend under the jurisdictional requirement under the Portal-to-Portal Act, and allowing defendant 30 days to answer amended complaint. [28]

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR WAGES AND
LIQUIDATED DAMAGES DUE UNDER
THE FAIR LABOR STANDARDS ACT OF
1938

By way of complaint, plaintiffs complain and alleges, as follows:

I.

Plaintiffs bring this action on behalf of themselves and all other employees similarly situated, pursuant to Sec. 16 (b) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Cong., CH. 676, 52 Stat. 1060-1069 (1938), 29 U.S.C. Sec. 201-219), hereinafter referred to as the Act to recover overtime wages, liquidated damages and attorneys' fees.

II.

Jurisdiction of this action is conferred upon the Court by Sec. 16 (b) of the Act and by Sec. 24 (8) of the Judicial Code (28 U.S.C. Sec. 41 (8)). [29]

III.

The other employees similarly situated and on behalf of whom this action is brought are: Luther M. Walters, Samuel D. Tinker, Frank Hemminger, Oliver H. Raftery, Fred M. Koehler, Charles R. Cobb, Charles E. Smith-Sanford. Each of those employees have consented in writing to become parties to this action, their written consents being attached hereto as Exhibits one through seven inclusive and by this reference made a part hereof.

IV.

Defendant is a corporation organized under the laws of the State of California, authorized to do business therein and having its principal place of business in the County of Los Angeles, State of California, within the jurisdiction of this Court.

V.

At all times herein mentioned, defendant was engaged at its said place of business in the County of Los Angeles, State of California, within the jurisdiction of this Court, in interstate commerce and in the production of goods, to-wit, ships, for interstate commerce within the meaning of the Act.

VI.

Within three years last past, defendant employed the plaintiffs and the other employees similarly

situated, on behalf of whom this action is brought, at its said place of business, as maintenance electricians, marine electricians, stationary engineers, operating engineers, mechanical maintenance employees, toolroom attendants, toolroom mechanics, warehousemen, issue and receiving clerks, and in various other crafts and capacities. [30]

VII.

During the respective periods of employment by the defendant, as aforesaid, plaintiffs and said other employees similarly situated, were compensated at various hourly rates, the precise period of employment and hourly rates at which plaintiffs and each such employees were employed are contained in the books and records of the defendant, and are not known to the plaintiffs at the present time. In substantially all of the weeks in which plaintiffs and other employees similarly situated were employed, they were credited with having worked forty-eight (48) hours or more, while employed on the day shift, with having worked forty-five (45) hours or more while on the swing shift, and with having worked forty-two (42) hours or more while employed on the grave-yard shift, for forty (40) hours of which they were paid at straight time, and for all hours for which they were credited in excess of forty (40) hours, they were paid at the rate of time and one-half. In addition to said hours for which they were credited and paid, the plaintiffs and said other employees similarly situated worked one-half ($1\frac{1}{2}$) hour each day, or three (3) hours or more each

week, for which they were not credited and for which they received no compensation whatsoever.

VIII.

The activities which the plaintiffs and said other employees similarly situated performed during each of said one-half ($\frac{1}{2}$) hours each day were and are compensable activities within the meaning of the Fair Labor Standards Act of 1938, as amended by the Portal-to-Portal Act of 1947 by virtue of and in accordance with the express provision of a written collective bargaining agreement then in effect between the plaintiffs, their collective bargaining representatives and the defendant. [31]

IX.

There is now due, owing and unpaid, from the defendant to the plaintiffs, and to each of the employees similarly situated, on behalf of whom this action is brought, a sum equal to one and one-half times the regular rate at which each such employee was employed and for which he was compensated, times three(3) or more hours for each week of his employment by the defendant, and for which he was not paid, plus an equal amount as liquidated damages.

X.

Section 16 (b) of the Act provides that the Court in this action shall, in addition to any judgment awarded to plaintiffs, allow a reasonable attorneys' fee to be paid, by the defendant.

Wherefore, plaintiffs pray judgment against the defendant and in favor of the plaintiffs and each of

the employees similarly situated, on behalf of whom this action is brought, in a sum equal to one and one-half times the regular rate at which each such employee was employed, times three (3) or more hours for which he was not paid in each week of his employment by the defendant, plus an equal amount as liquidated damages, plus attorneys' fees for services rendered herein, and for costs of suit and all proper relief.

MOHR and BORSTEIN and
PERRY BERTRAM.

By /s/ PERRY BERTRAM,

Attorneys for Plaintiffs. [32]

EXHIBIT 1

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Charles R. Cobb hereby consents to become a party plaintiff in the above entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: March 11, 1949.

/s/ CHARLES R. COBB. [33]

EXHIBIT 2

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Frank Hemminger hereby consents to become a party plaintiff in the above en-

titled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: April 1, 1949.

/s/ FRANK HEMMINGER. [34]

EXHIBIT 3

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Fred M. Koehler hereby consents to become a party plaintiff in the above entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: March 11, 1949.

/s/ FRED M. KOEHLER. [35]

EXHIBIT 4

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Oliver H. Raftery hereby consents to become a party plaintiff in the above entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: March 12, 1949.

/s/ OLIVER H. RAFTERY. [36]

EXHIBIT 5

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Charles E. Smith-Sanford hereby consents to become a party plaintiff in the above

entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: March 12, 1949.

/s/ CHARLES E. SMITH-
SANFORD. [37]

EXHIBIT 6

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Harry Sortors hereby consents to become a party plaintiff in the above entitled consents to become a party plaintiff in the above entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938, as amended.

Dated: March 30, 1949.

/s/ HARRY SORTORS. [38]

EXHIBIT 7

[Title of District Court and Cause.]

CONSENT TO BECOME PARTY PLAINTIFF

The undersigned Luther M. Walters hereby consents to become a party plaintiff in the above entitled action for the purpose of obtaining unpaid overtime wages under the Fair Labor Standards Act of 1938 as amended.

Dated: March 14th, 1949.

/s/ LUTHER M. WALTERS. [39]

State of California,

County of Los Angeles—ss.

Harry Sortors being by me first duly sworn, de-

poses and says: that he is the plaintiff in the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ HARRY SORTORS.

Subscribed and sworn to before me this 4th day of April, 1949.

[Seal] /s/ ELIZABETH N. DUMESNIL,
Notary Public in and for the County of Los Angeles
State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed April 6, 1949. [40]

[Title of District Court and Cause.]

PRE-TRIAL STIPULATION OF FACTS AND,
STATEMENT OF ISSUES

Stipulation of Facts

It is hereby stipulated between the plaintiffs and defendant, through their respective counsel:

I.

The present name of the defendant is Consolidated Liquidating Corporation, and the pleadings on file may be amended to show said name in place of the name Consolidated Steel Corporation.

II.

At all times material to this action and during the employment by defendant of one or more of the plaintiffs and claimants, to-wit, from January 16, 1944 to and including November 29, 1946, the defendant produced ships under contract [41] with the United States Maritime Commission at shipyards at Wilmington, in the City and County of Los Angeles, State of California. Upon completion of construction, each ship was delivered to the United States Maritime Commission at said shipyards, and thereafter was sent by the United States Maritime Commission to points outside the State of California.

III.

During certain periods of the employment by defendant of one or more of the plaintiffs and claimants, to-wit, between January 1, 1945 and November 29, 1946, the defendant repaired and decommissioned Naval ships and vessels belonging to the United States Navy pursuant to contracts and commitments with the United States Navy.

IV.

Plaintiffs' Exhibit 1 is a copy of the collective bargaining agreement in existence between collective bargaining representatives of plaintiffs and claimants and the defendant during the periods to which plaintiffs' and claimants' claims relate.

V.

Defendant's Exhibit A is a copy of a government-owned facilities contract between the United States Maritime Commission and the defendant, which

contract states the terms under which the defendant operated shipyards at Wilmington, California on premises provided by said United States Maritime Commission. Said contract was in effect during all the time material to the issues presented herein, and related to the place at which plaintiffs and claimants performed the services which are the basis of the claims asserted in this action.

VI.

Defendant's Exhibit B is a copy of one of the vessel construction contracts between the United States Maritime [42] Commission and the defendant, which contract was in effect during the time material to the issues and claims asserted in this action.

Issues

1. Does the complaint state a claim of which this court has jurisdiction?

2. Were the plaintiffs and claimants employed by the defendant in the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938, as amended?

3. In which workweeks, if any, did each of the plaintiffs and claimants work during their lunch periods?

4. If any lunch periods were worked by plaintiffs and claimants, was that work compensable under the collective bargaining agreement, Exhibit 1?

5. If such lunch periods were so compensable, was the failure by defendant to pay plaintiffs and claimants therefor in good faith?

6. Are the claims of the plaintiffs and claimants for compensation alleged to have been earned prior to May 14, 1945, barred by Sections 6, 7 and 8 of the Portal-to-Portal Act of 1947?

February 24, 1949.

MOHR & BORSTEIN and
PERRY BERTRAM,

By /s/ PERRY BERTRAM,
Attorney for Plaintiffs.

ALFRED WRIGHT and
HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant.

[Endorsed]: Filed April 28, 1949. [43]

[Title of District Court and Cause.]

NOTICE OF MOTIONS: TO DISMISS AMEND-
ED COMPLAINT, TO DISMISS CLAIMS
OF CERTAIN CLAIMANTS, TO STRIKE
CERTAIN MATTER, FOR A MORE DEFINITE STATEMENT

To the Plaintiffs and Other Claimants Herein, and
to Their Attorneys, Mohr & Borstein and Perry
Bertram:

Please Take Notice that on Monday, May 23, 1949,
at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, in the court room of the Hon. Peirson M. Hall, United States District Judge, located in the United States Post Office and Court House at Los Angeles, California, the defendant,

Consolidated Liquidating Corporation (sued and designated in the Amended Complaint under its former corporate name, Consolidated Steel Corporation, Ltd.), by and through its attorneys herein, will present motions for orders and relief, as follows:

I.

To dismiss the Amended Complaint and the pending action in its entirety. [109]

Said motion will be presented and urged upon the ground that the Amended Complaint fails to state a claim upon which relief can be granted against the defendant, particularly by reason of the provisions of the Portal-to-Portal Act of 1947 (29 USC 251, et seq) which delimit the types of activities which are compensable under the Fair Labor Standards Act of 1938, and further limit the jurisdiction of both Federal and State courts to proceedings to enforce liability only for activities of the types recognized as compensable.

II.

To dismiss the Amended Complaint and pending action to the extent that it purports to assert claims on behalf of "other employees similarly situated" to the plaintiffs Glenn O. Prickett, H. F. Winans and S. E. Whitney, which "other employees similarly situated" appear to be the following persons: Charles R. Cobb, Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Sanford, Samuel D. Tinker, Luther M. Walters.

Said motion will be presented as an alternative to

the preceding motion, and will be urged upon the additional grounds that it appears upon the face of the Amended Complaint and from the exhibits attached thereto that the alleged claims of the above-named claimants accrued prior to the enactment of the Portal-to-Portal Act of 1947, on May 14, 1947; that said claimants were not parties plaintiff herein at any time prior to May 14, 1947; that said claimants did not become parties plaintiff herein within one hundred and twenty (120) days after the date of the enactment of the Portal-to-Portal Act of 1947; that the [110] pending action may not be considered pending as to said claimants at any time prior to April 6, 1949, the date on which their purported respective written Consents to participate in this action were filed in this Court; that by reason of the foregoing facts said claimants have no status in the pending action, and their alleged claims are barred by the applicable statute of limitations, all as provided in the Portal-to-Portal Act of 1947 (29 USC 251, et seq).

III.

To strike from the amended Complaint the following matter:

(a) Paragraph I, page 1, line 22, the words "and all other employees similarly situated."

(b) Paragraph III, page 2, lines 1 to 9, inclusive, the entire paragraph as follows:

"The other employees similarly situated and on behalf of whom this action is brought are: Luther M. Walters, Samuel D. Tinker, Frank Hemminger, Oliver H. Raftery, Fred M. Koehler, Charles R.

Cobb, Charles E. Smith-Sanford. Each of those employees have consented in writing to become parties to this action, their written consents being attached hereto as Exhibits one through seven inclusive and by this reference made a part hereof.", together with the several exhibits Nos. 1 to 7, inclusive, mentioned therein and attached to the Amended Complaint.

(c) Paragraph VI, page 2, line 24, the words "and other employees similarly situated."

(d) Paragraph VI, page 3, the several words and clauses as follows: "and said other employees similarly [111] situated" in lines 3 and 4; "and each such employees" in line 6; "and other employees similarly situated" in line 9; "and other employees similarly situated" in line 19.

(e) Paragraph VIII, page 3, lines 24 and 25, the words: "and said other employees similarly situated."

(f) Paragraph IX, page 4, lines 3, the words: "and to each of the employees similarly situated on behalf of whom this action is brought."

(g) Concluding paragraph, page 4, lines 16 and 17, the words: "and each of the employees similarly situated on behalf of whom this action is brought."

Said Motion to Strike each of the foregoing portions of the Amended Complaint will be presented as an alternative to the foregoing motions and will be urged upon the ground that "employees similarly situated," including those named in Paragraph III thereof, have no standing as parties or litigants in this action and no claims can be asserted in their

behalf by plaintiffs herein for the reasons, as more particularly stated in the foregoing Motions, that said claims have not been presented in the manner or within the time required by the Portal-to-Portal Act of 1947, and as a result this Court has no jurisdiction to consider or determine the alleged claims of any "employee similarly situated" to plaintiffs.

IV.

For more definite statement of certain matters alleged in Paragraph VIII of the Amended Complaint, to wit:

(a) the particular language of the alleged "express provision of a written collective bargaining agreement" under and pursuant to which "activities * * * performed during each of said one-half ($1\frac{1}{2}$) hours [112] each day were and are compensable activities within the meaning of the Fair Labor Standards Act of 1938, as amended, by the Portal-to-Portal Act of 1947."

Said Motion will be presented and urged as an alternative to defendant's Motion to dismiss the Amended Complaint and pending action, and will be based upon the ground that the allegations contained in said Paragraph VIII are so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading thereto; and said allegations are mere conclusions of the pleader which are uninformative in fact and insufficient in law.

The foregoing Motions will be based upon the pleadings and records herein, and defendant will

rely upon the Memorandum of Points and Authorities In Support of Motions, which is presented herewith.

Dated at Los Angeles, California, this 5th day of May, 1949.

ALFRED WRIGHT and
HAROLD F. COLLINS

By/s/ HAROLD F. COLLINS,
Attorneys for Consolidated
Liquidating Corporation.

Affidavit of service by mail attached.

[Endorsed]: Filed May 5, 1949. [113]

At a stated term, to wit: The February Term. A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 23rd day of May, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

For hearing on motion of defendant Consolidated Liquidating Corp. to dismiss the amended complaint, to dismiss claims of certain claimants, to strike certain matter, and for a more definite statement, pursuant to notice thereof filed May 5, 1949; Perry Bertram, Esq., appearing as counsel for

plaintiffs; H. F. Collins, Esq., appearing as counsel for defendant;

Attorney Collins makes a statement in support of motion to dismiss. Attorney Bertram argues in opposition to motion to dismiss.

Court orders motion to dismiss as to parties similarly designated granted, and as to parties-plaintiff denied with ten days allowed to amend the amended complaint and Court orders cause continued to June 27, 1949, 10 a.m., for setting. [124]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Defendant, Consolidated Steel Corporation,
and to Alfred Wright and Harold F. Collins,
Esqs., its attorneys, and to the Clerk of the
above-entitled Court:

Notice is hereby given that plaintiffs, Luther M. Walters, Samuel D. Tinker, Frank Hemminger, Oliver H. Raftery, Fred M. Koehler, Charles R. Cobb and Charles E. Smith-Sanford, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment of Dismissal as to each of them, entered in this action on May 23rd, 1949.

Dated: June 22, 1949.

MOHR and BORSTEIN and
PERRY BERTRAM

By /s/ DAVID L. MOHR,

Attorneys for Plaintiffs.

Affidavit of service by mail attached.

[Endorsed]: Filed June 22, 1949. [125]

[Title of District Court and Cause.]

STIPULATION TO EXTEND TIME TO FILE
RECORD AND DOCKET APPEAL, AND
ORDER GRANTING TIME

It is hereby stipulated by and between plaintiffs and appellants and defendant and appellee, through their respective attorneys, that the time within which to file the record and docket the appeal herein may be extended to the 20th day of September, 1949.

Dated: July 22, 1949.

MOHR and BORSTEIN and
PERRY BERTRAM

By /s/ DAVID L. MOHR,
Attorneys for Plaintiffs and
Appellants.

ALFRED WRIGHT and
HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant and
Appellee.

It Is So Ordered.

Dated: July 27, 1949.

/s/PEIRSON M. HALL,
Judge. [127]

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil No. 6274-PH

GLENN O. PRICKETT, et al.,
Plaintiffs and Appellants,

vs.

CONSOLIDATED STEEL CORPORATION,
Defendant and Appellee.

ORDER OF DISMISSAL AS TO
CERTAIN PLAINTIFFS

The motions of defendant, Consolidated Liquidating Corporation, sued herein as Consolidated Steel Corporation to dismiss the amended complaint as to the Plaintiffs and as to certain other claimants having come on regularly for hearing before this Court on May 23, 1949, and the plaintiffs and other claimants being represented by their counsel, Mohr and Borstein and Perry Bertram, by Perry Bertram, and the defendant being represented by its counsel, Alfred Wright and Harold F. Collins, by Harold F. Collins, and arguments having been presented on behalf of both parties, the Court being fully advised, and the matter being submitted.

It Is Ordered and Adjudged, that the motion to dismiss certain claimants named in the amended complaint is hereby granted as to the following named claimants, to wit: [128] Charles R. Cobb,

Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Sanford, Samuel D. Tinker, Luther M. Walters.

It Is Further Ordered and Adjudged, that the motion to dismiss the amended complaint as to Glenn O. Prickett, H. F. Winans and S. E. Whitney, is denied.

It Is Further Ordered and Adjudged, that the motion to strike from the amended complaint be and the same hereby is denied.

It Is Further Ordered and Adjudged, that the motion for a more definite statement be and the same hereby is denied.

Dated: 9/8/49, 1949.

/s/ PEIRSON M. HALL,
Judge.

Approved As To Form:

Dated: Sept. 7, 1949.

ALFRED WRIGHT &
HAROLD F. COLLINS

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant.

Judgment entered Sept. 8, 1949.

Docketed Sept. 8, 1949.

[Endorsed]: Filed Sept. 8, 1949. [129]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Defendant and Appellee and to the Clerk
of the United States District Court:

Please Take Notice that the plaintiffs hereby appeal to the Court of Appeals for the Ninth Circuit from that portion of the Order of Dismissal in the above-entitled case signed September 8, 1949, filed and entered September 8, 1949 which dismisses the claims of Charles R. Cobb, Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Sanford, Samuel D. Tinker and Luther M. Walters.

Dated: September 8, 1949.

MOHR and BORSTEIN and
PERRY BERTRAM

By /s/ PERRY BERTRAM,

Attorneys for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 8, 1949. [130]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Appellants hereby designate the following pleadings and exhibits to be prepared and forwarded to the Court of Appeals, Ninth Circuit, as the record on the appeal:

1. Complaint. Filed 1/16/47.
2. Notice of Motions: To dismiss action, to

strike matters, for more definite statement, and for bill of particulars. Filed 4/11/47.

3. Order of May 12, 1947 on Motions to Dismiss, etc.

4. Bill of Particulars. Filed 6/5/47.

5. Answer to Complaint. Filed 6/16/47.

6. Pre-Trial Stipulation of Facts and Statement of Issues. Filed 4/28/49.

7. Order on Pre-Trial Conference. Filed 3/7/49.

8. Amended Complaint. Filed 4/6/49. [132]

9. Notice of Motion by Defendant to Dismiss Certain Plaintiffs in Amended Complaint. Filed 5/5/49.

10. Order Granting Motion to Dismiss as to Parties Similarly Situated. Filed 5/23/49.

11. Notice of Appeal. Filed 6/22/49.

12. Order of Dismissal entered September 8, 1949. Filed 9/8/49.

13. Notice of Appeal from said Order of Dismissal. Filed 9/8/49.

Dated: September 7, 1949.

MOHR and BORSTEIN and
PERRY BERTRAM

By /s/ PERRY BERTRAM,
Attorneys for Plaintiffs.

[Endorsed]: Filed Sept. 8, 1949. [133]

[Title of District Court and Cause.]

STIPULATION RE CLERK'S RECORD
ON APPEAL AND WAIVER

It Is Hereby Stipulated, by and between the plaintiffs and appellants and the defendant and appellee, by and through their respective counsel, that the Clerk's record designated by the plaintiffs and appellants shall be the record on appeal and the defendant and appellee hereby waives the right to designate further or additional record to be included therein.

Dated: September 7, 1949.

MOHR and BORSTEIN and
PERRY BERTRAM

By /s/ PERRY BERTRAM,
Attorneys for Plaintiffs.

ALFRED WRIGHT &
HAROLD F. COLLINS

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant.

[Endorsed]: Filed Sept. 8, 1949. [135]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 135, inclusive, contain the original Complaint for Wages and Liquidated Dam-

ages Due Under the Fair Labor Standards Act of 1938; Notice of Motions to Dismiss Action; to Strike Matter; for More Definite Statement and Bill of Particulars and Memorandum of Points and Authorities; Bill of Particulars; Answer to Complaint; Amended Complaint for Wages and Liquidated Damages Due Under the Fair Labor Standards Act of 1938; Pre-Trial Stipulation of Facts and Statement of Issues and Exhibits thereto; Notice of Motions to Dismiss Amended Complaint; to Dismiss Claims of Certain Claimants; to Strike Certain Matter for a More Definite Statement and Memorandum of Points and Authorities in Support of Motions; Notice of Appeal filed June 22, 1949; Stipulation and Order Extending Time to File Record and Docket Appeal; Order of Dismissal as to Certain Plaintiffs; Notice of Appeal filed Sept. 8, 1949; Designation of Record on Appeal and Stipulation re Clerk's Record on Appeal and Waiver and full, true and correct copies of minute orders entered May 12, 1947, March 7, 1949 and May 23, 1949 which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 16th day of September, A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12360. United States Court of Appeals for the Ninth Circuit. Glenn O. Prickett, H. F. Winans and S. E. Whitney, on behalf of themselves and other employees similarly situated, Appellants, vs. Consolidated Liquidating Corporation, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed September 19, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the U. S. Circuit Court of Appeals,
Ninth Circuit
No. 12360

GLENN O. PRICKETT, et al,
Appellants,
vs.

CONSOLIDATED LIQUIDATING CORP.,
Appellee.

STATEMENT OF POINTS ON APPEAL

Appellants in the above entitled action in compliance with Rule 19, subdivision 6, of the Rules of Practice of the above entitled court herewith submit their points on appeal:

The court erred:

1. In requiring the appellants to file consents to become parties plaintiff.

2. In ruling that the appellants were required to file consents to become parties plaintiff on or before ninety (90) days following the effective date of the Portal-to-Portal Act of 1947.

3. In dismissing the appellants' causes of action on the ground that appellants had not complied with the requirements pertaining to representative actions as provided in the Portal-to-Portal Act of 1947.

4. In granting defendant's motion to dismiss appellants' causes of action.

September 22, 1949.

Respectfully submitted,

MOHR & BORSTEIN and
PERRY BERTRAM,

By /s/ PERRY BERTRAM.

Affidavit of service by mail attached.

[Endorsed]: Filed Sept. 22, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE
PRINTED ON APPEAL

To the Clerk of the above entitled court and to the Appellee above named and to Wright and Collins, its attorneys:

Appellant hereby designates as the record to be

printed on the appeal herein, the entire Clerk's Transcript of Record, except, and it hereby requests to be omitted from the printed record, the following portions of the Clerk's Transcript:

Pages 10 to 14, inclusive, being Memorandum of Points and Authorities in Support of Defendant's Motions to Dismiss, to Strike, and for a More Definite Statement, filed April 11, 1947.

Pages 44 to 108, inclusive, being the Collective Bargaining Agreement between the parties attached as Plaintiffs' Exhibit 1 to the Pre-Trial Stipulation; the Maritime Commission Contract attached as Defendant's Exhibit A to said Pre-Trial Stipulation; and the Vessel Construction Contract attached as Defendant's Exhibit B to said Pre-Trial Stipulation.

Pages 114 to 122, inclusive, being the Memorandum of Points and Authorities in Support of Defendant's Motions directed to the Amended Complaint, filed May 5, 1949.

Respectfully submitted,
MOHR & BORSTEIN and
PERRY BERTRAM,

By/s/ PERRY BERTRAM.

Affidavit of service by mail attached.

[Endorsed]: Filed Sept. 22, 1949.

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil Action No. 6274-PH

GLENN O. PRICKETT, et al.,

Plaintiffs,

vs.

CONSOLIDATED STEEL CORPORATION,
Defendant.

FINAL JUDGMENT OF DISMISSAL

In the above matter, the motion of defendant, Consolidated Liquidating Corporation, to dismiss the amended complaint as to certain plaintiffs having come on regularly for hearing before this Court on May 23, 1949, and the plaintiffs being represented by their counsel, Mohr and Borstein and Perry Bertram, by Perry Bertram, and the defendant being represented by its counsel, Alfred Wright and Harold F. Collins, by Harold F. Collins, and arguments having been presented on behalf of both parties, the Court being fully advised, and the matter being submitted, and

The said motion to dismiss, on May 23, 1949, having been granted as to the following named plaintiffs: Charles R. Cobb, Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Stanford, Samuel D. Tinker and Luther M. Walters;

The Court finds and determines that there is no just reason for delaying entry of a final judgment of dismissal as to said Plaintiffs;

It Is Hereby Ordered and Adjudged that the claims of plaintiffs, Charles R. Cobb, Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Stanford, Samuel D. Tinker and Luther M. Walters, be, and the same are, dismissed.

The Court hereby expressly directs the entry of this Judgment of Dismissal.

Dated July 9, 1951.

/s/ PEIRSON M. HALL,
U. S. District Judge.

Approved as to form, this 29th day of June, 1951.

ALFRED WRIGHT, and
HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant.

Docketed and entered July 10, 1951.

[Endorsed]: Filed July 9, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Defendant and Appellee and to the Clerk of
the United States District Court:

Please Take Notice that the plaintiffs hereby appeal to the Court of Appeals for the Ninth Circuit from that portion of the Order of Dismissal in the above-entitled case signed and filed July 9, 1951;

docketed and entered July 10, 1951, which dismisses the claims of Charles R. Cobb, Frank Hemminger, Fred M. Koehler, Oliver H. Raftery, Charles E. Smith-Stanford, Samuel D. Tinker and Luther M. Walters.

Dated July 12, 1951.

MOHR AND BORSTEIN, and
PERRY BERTRAM,

By /s/ DANIEL L. MOHR,
Attorneys for Plaintiffs.

[Endorsed]: Filed July 12, 1951.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

STIPULATION RE CLERK'S RECORD ON
APPEAL AND WAIVER

It Is Hereby Stipulated, by and between the plaintiffs and appellants and the defendant and appellee, by and through their respective counsel, that the Clerk's record heretofore certified to the Court of Appeals in Civil Appeal No. 12,360, plus the Final Judgment of Dismissal entered herein July 10, 1951, together with Notice of Appeal and this Stipulation, shall be the record on appeal and the

parties hereby waive the right to designate further or additional record to be included therein.

Dated July 23, 1951.

MOHR AND BORSTEIN, and
PERRY BERTRAM,

By /s/ PERRY BERTRAM,
Attorneys for Plaintiffs.

ALFRED WRIGHT, and
HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,
Attorneys for Defendant.

[Endorsed]: Filed July 27, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 6, inclusive, contain the original Final Judgment of Dismissal; Notice of Appeal and Stipulation re Clerk's Record on Appeal and Waiver which, together with the Transcript of Record on the former appeal in this case being No. 12360 in the United States Court of Appeals for the Ninth Circuit, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$1.20 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 8th day of August, A.D. 1951.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13049. United States Court of Appeals for the Ninth Circuit. Glenn O. Prickett, et al., Appellants, vs. Consolidated Steel Corporation, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed August 9, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13049

GLENN O. PRICKETT, et al.,

Appellants,

vs.

CONSOLIDATED LIQUIDATING CORP.,

Appellee.

STIPULATION AND ORDER RE RECORD ON
APPEAL, STATEMENT OF POINTS ON
APPEAL AND BRIEFS

For the reason that the record on the previous appeal in the above-entitled matter, being Appeal No. 12360, contains the identical record which is to be presented to the Court in the instant appeal, augmented only by the final Judgment entered herein, the Notice of Appeal, and the Stipulation re Record on Appeal, and for the reason that the briefs heretofore submitted by the respective parties in said earlier Appeal No. 12360 contain the identical arguments and identical citation of authorities which are to be presented to the Court on this appeal, and for the further reason that duplication of said record and duplication of said briefs would unnecessarily burden the parties with additional cost and expenses,

It is hereby stipulated by and between the parties as follows:

1. The record on appeal in Appeal No. 12360 in

the above-entitled matter is hereby designated as the record on appeal in this Appeal No. 13049, the same to be used without being reprinted, with the exception that to said record is to be added the following documents hereby designated by the parties as additional record on appeal:

(a) Final Judgment of Dismissal entered July 10, 1951.

(b) Notice of Appeal dated July 12, 1951.

(c) Stipulation Re Clerk's Record on Appeal and Waiver.

2. It is further stipulated that the briefs heretofore filed by the respective parties in Appeal No. 12360 be received by the Court as the respective briefs of the parties on this Appeal No. 13049, provided, however, that either party may, within the time allowed by the Rules for the filing of briefs on appeal, file supplemental brief covering any points or authorities not included in their briefs in Appeal No. 12360, or, in the alternative and within the same time, may file a statement with the Clerk of the Court that they or either of them do not propose to file such supplemental brief.

3. It is further stipulated that the Appellants' Statement of Points on Appeal now included in the record in Appeal No. 12360 be deemed to be the Appellants' Statement of Points on Appeal in this appeal No. 13049.

By the foregoing stipulation neither of the parties

waives the right to oral argument before the Court.

August 18, 1951.

MOHR AND BORSTEIN, and

PERRY BERTRAM,

By /s/ PERRY BERTRAM,

Attorneys for Appellants.

ALFRED WRIGHT, and

HAROLD F. COLLINS,

By /s/ HAROLD F. COLLINS,

Attorneys for Appellee.

ORDER

Upon the filing of the foregoing stipulation, and good cause appearing therefor, it is so ordered.

August 21, 1951.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM HEALY,

/s/ WM. E. ORR,

Judges U. S. Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Aug. 27, 1951.